



Board of  
Behavioral  
Sciences

1625 North Market Blvd.  
Suite S-200  
Sacramento, CA 95834  
(916) 574-7830  
TTY (800) 326-2297  
Fax (916) 574-8625  
[www.bbs.ca.gov](http://www.bbs.ca.gov)

## MEETING NOTICE

### Compliance and Enforcement Committee March 24, 2011

Department of Consumer Affairs  
El Dorado Room  
1625 North Market Blvd., #220  
Sacramento, CA 95834

9:00 a.m. – 12:00 p.m.

- I. Introductions
- II. Review and Approval of the June 25, 2010 Meeting Minutes
- III. Enforcement Program Updates
  - a. Enforcement Staffing
  - b. Retroactive Fingerprint Process
  - c. Enforcement Performance Measures
  - d. Probation Statistics
  - e. Phamatech Drug Testing Contract
  - f. National Practitioner Data Bank – Healthcare Integrity and Protection Data Bank
- IV. Update Senate Bill 1441 Substance Abuse Coordination Committee
- V. Enforcement Academy Presentation – Shelly Menzel
- VI. Discussion regarding Probationers Required to Undergo a Psychological Evaluation
- VII. Future Meeting Dates
- VIII. Suggestions for Future Agenda Items
- IX. Public Comment for Items Not on the Agenda

*Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.*

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT [www.bbs.ca.gov](http://www.bbs.ca.gov).

NOTICE: The meeting is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.



Governor  
Edmund G. Brown Jr.  
State of California  
State and Consumer  
Services Agency  
Department of  
Consumer Affairs

**Blank Page**

## Compliance and Enforcement Committee Minutes - **DRAFT**

June 25, 2010

Department of Consumer Affairs  
El Dorado Room  
1625 N. Market Blvd, #N220  
Sacramento, CA 95834

via Teleconference:  
6405 S. Halm Ave.  
Los Angeles, CA 90056

925 Harbor Plaza  
Long Beach, CA 90802

### **Members Present**

Patricia Lock-Dawson, Chair, Public Member  
Samara Ashley, Public Member  
Harry Douglas, Public Member

### **Staff Present**

Kim Madsen, Executive Officer  
Marsha Gove, Examination Analyst

### **Members Absent**

None

### **Guest List**

On file

Patricia Lock-Dawson, Compliance and Enforcement Committee (Committee) Chair, called the meeting to order at 10:10 a.m. Marsha Gove called roll, and a quorum was established.

### **I. Introductions**

The Committee, Board of Behavioral Sciences (BBS) staff, and meeting attendees introduced themselves.

### **II. Review and Approval of the March 25, 2010 Meeting Minutes**

***Harry Douglas moved to approve the March 25, 2010 Compliance and Enforcement Committee meeting minutes. Samara Ashley seconded. The Committee voted unanimously (3-0) to pass the motion.***

### **III. Update on Retroactive Fingerprinting Requirement**

Kim Madsen reported that as a result of the adopted regulations in 2009, all licensees and registrants who have previously not submitted fingerprints as a condition of licensure or registration for the BBS, or for whom fingerprints do not exist in the California Department of Justice's (DOJ) criminal offender record identification database, must do so prior to their next renewal date occurring on or after October 31, 2009. Staff began this project in August 2009. Staff identified over 34,000 individuals in the BBS licensing population affected by this requirement. To date, about half of those individuals have been fingerprinted.

BBS staff has compiled a list identifying individuals with deadlines to comply ranging from October 31, 2009 to May 31, 2010 who failed to submit fingerprints. Failure to comply with this requirement can result in disciplinary action or the issuance of a citation, which may include a fine of up to \$5,000. To date, the enforcement unit has issued approximately 80 citations; 20 citations were withdrawn because those individuals complied with the requirement.

Ms. Madsen stated that staff has one more year to complete the project, and no problems are anticipated.

#### **IV. Update on Enforcement Performance Measures and Process Improvements**

Ms. Madsen reported that beginning February 2010, the Board began submitting its enforcement statistics in a new report format to the Department of Consumer Affairs (DCA), Director of Compliance and Enforcement. The report has a dual purpose: 1) it provides statistical information to DCA regarding each Board and Bureau's enforcement program; 2) it's a tool for each board and bureau to monitor its progress to reduce the average investigation and adjudication time lines of enforcement cases from 36 months to 12 to 18 months.

The Board's enforcement statistics from January 1, 2010 through May 30, 2010 and from July 1, 2009 through December 31, 2009 were provided. Ms. Madsen explained that the Board's benchmarks differ from DCA's benchmarks. Some categories in the new standardized report are defined differently from the Board's definition in previous reports. Those categories reflect "N/A." Additionally, the "N/A" designation is reflected during this same time period if the data is captured in another category or was not previously captured.

Ms. Madsen added that year-to-date, the Board has over 1200 consumer complaints as of May 2010. Along with the increase in consumer complaints, there is also an increase in arrest reports and convictions, in part due to the retro-fingerprint program and large application volume.

To date, over 1300 cases are assigned to the investigative analysts; over 600 cases are pending. Currently, it is taking staff an average of 100 days to close a case, which is within the target goal.

Year-to-date, the Board's two field investigators have received 52 cases and closed 49 cases. The bulk of the field work is conducted by staff. About 10 cases are referred to the Division of Investigation (DOI).

Overall, the Board has closed over 1600 cases and averaging just over 100 days to close. Over 100 cases have been referred to the Attorney General's office, and they have close to 150 cases pending.

Ms. Madsen reported on process improvements. Board enforcement staff is nearing the completion of its review of the current procedures. To date several duplicative steps have been eliminated; several forms were consolidated or eliminated; procedures were revised for efficiency; and a review of all pending cases at the Attorney General was completed. Ongoing the enforcement staff will review the changes to its procedures to identify further areas for efficiency or revision.

Enforcement Manager Pearl Yu is participating in the Process Action Team Committee (PAT). The PAT Committee is comprised of representatives from each Board, Bureau, and

the DOI. This cooperative effort is representative of DCA's efforts to resolve the procedural challenges identified during its review of the entire enforcement process. The PAT Committee initially was tasked with establishing criteria to refer cases to DOI. DOI and DCA expanded the PAT Committee's role to conduct an analysis of DCA's complaint process in order to improve the effectiveness and efficiency of the intake, investigation, and resolution phases of the process. The PAT Committee anticipates submitting a draft proposal to DCA Director Brian Stiger within 90 days.

Ms. Madsen reported on DCA's Enforcement Academy. Several members of the enforcement staff have attended the academy. This eight day training academy is designed to share best practices from various enforcement programs. The Board's enforcement staff that participated in the academy presented their experiences with the Committee.

Mr. Douglas requested a presentation of the Enforcement Academy and the training content at a future meeting.

## **V. Presentation on the Probation Process**

Ms. Madsen reported on the probation process. She explained that it is a process applied to a licensee or registrant who has gone through the administration process and either through a proposed decision issued by an administrative law judge or through settlement negotiations, the individual's license or registration is revoked but the revocation is stayed. The individual must comply with specific terms and conditions outlined in the disciplinary order.

The Board's probation monitor, Julie McAuliffe, performs a multitude of functions including coordinating and reviewing the disciplinary document, setting up the probationary file, mailing probation packets to probationers, holding initial telephone conferences to discuss probation terms and conditions, securing psychological evaluators and reviewing psychological evaluations, approving and monitoring supervisors, therapists, billing monitors, remedial education, rehabilitation programs, biological fluid test sites, and probation costs. A file review is performed on a quarterly basis to ensure compliance and document any requirement completed. Once a probationer completes probation, the license or registration is restored without restrictions.

Ms. Madsen explained that if a probationer violates any term of his or her probation, the probationer is given notice and the opportunity to clear the violation(s). If the probationer continues to be non-compliant, the Board forwards the case back to the Attorney General to impose the previously stayed discipline of revocation.

Ms. McAuliffe monitors 67 probationers. Of those, 39 are in compliance, 6 are in violation of their terms and conditions, 8 have been referred back to the Attorney General to revoke their probation for failure to comply, and 14 are tolled. Tolling of probation is a condition that allows a probationer to put the probation on hold during a period of time in which he or she is out of state or not currently practicing in California. Once he or she returns to California and begins to practice or resumes practice in state, the probation becomes active and the period of tolled probation is added to the probation term thereby extending the probation expiration date. During a tolling period, the probationer must obey all laws, maintain a current registration/license and continue to submit Quarterly Reports. The average length of probation is five years.

Ms. Madsen explained that the statute allows a probationer to petition for modification of a condition after one year and petition for early termination of probation after at least two

years for those whose probation period is three years or more. Petitions are held at Board meetings and may include an Administrative Law Judge. After a probationer presents their case, the Board meets in closed session to decide whether to grant or deny the request.

Ms. Madsen anticipates the number of probationers to increase to over 100 very soon.

A probation program overview and the Disciplinary Guidelines were provided for review.

Mr. Douglas requested a brief orientation at a future meeting on what criteria to follow when deciding whether to grant or deny a probationer's petition for modification.

## **VI. Presentation of Legal Options to Suspend a Licensee From Practice**

### **a. Penal Code 23**

Ms. Madsen provided an overview of Penal Code Section 23 (PC 23). The Board's mandate is consumer protection, to ensure that licensees provide services to consumers in a safe and ethical manner. This is mandated in Business and Professions Code (BPC) Section 4990.16. The legislative intent is noted in BPC 4980.34, that the Board must utilize all the resources available to achieve the consumer protection mandate. The first resource available is PC 23.

PC 23 allows a state agency to voluntarily appear and provide information related to the protection of the public at any criminal proceeding. Typically, these proceedings are conducted in Superior Courts throughout the state.

PC 23 provides the Board a procedure to immediately remove a licensee from practice. Following notification of a licensee or registrant's arrest, the Board reviews the arresting charges to determine if the licensee or registrant presents an immediate threat to the public. If the Board determines the charges warrant immediate removal of a licensee from practice, the Attorney General is contacted to discuss and initiate the PC 23 process.

Business and Professions Code section 320 allows a state agency to voluntarily appear at any proceeding, (state commission, regulatory agency, department, other state agency, any state or federal court or agency) to present evidence and arguments for the effective protection of consumers.

During the proceeding, the Deputy Attorney General provides the court information regarding the qualifications, duties, and functions of a Board licensee, the relationship to the charges, and the Board's mandate to protect the public. The presiding judge determines if the licensee will be suspended from practice and for what time period. The suspension may be a condition of bail, probation, or release on one's own recognizance.

Since July 1, 2006, six (6) licensees were suspended from practice utilizing the provisions of Penal Code Section 23.

### **b. Interim Suspension**

Ms. Madsen presented on interim suspension. Business and Professions Code Sections 4982, 4989.54, 4992.3, and 4999.90 provide the Board the authority to suspend any license or registration if the licensee or registrant is guilty of unprofessional conduct.

Business and Professions Code Section 494, provides the Board authority to file a petition for an interim order to suspend the license if:

- The licensee has engaged in acts or omissions which violate the Board's law or has been convicted of a crime substantially related to the licensed activity,
- And the licensee presents a threat to the public's health, safety, and welfare.

The Board works with the Deputy Attorney General to initiate the Interim Suspension process.

The Interim Suspension process is an administrative action conducted before an Administrative Law Judge and has specific time lines that must be followed. Except in cases in which from the supporting documentation it appears that serious injury to the public would occur, the licensee must be given at least 15 days notice of the hearing on the petition for the Interim Suspension. In cases where notice is not provided, the licensee is entitled to a hearing within 20 days of the issuance of the order.

The licensee has the right to receive copies of the documents in support of the Board's petition, legal representation and present oral arguments and evidence. The evidentiary standard in a petition for an interim suspension hearing is a preponderance of the evidence. The Administrative Law Judge must issue the decision on the petition within five (5) days.

If an Interim Suspension Order is issued, the Board has 15 days to file an accusation. If the licensee files a Notice of Defense (response to the accusation), an administrative hearing must be held within 30 days of the receipt of the licensee's response. During this hearing, the evidentiary standard is clear and convincing. A decision on the accusation must be rendered within 30 days.

Due to the specified time lines, required documentation, and subsequent filing of an accusation, the decision to pursue this action is determined in consultation with the Attorney General.

Since 2004, three licensees were issued and Interim Suspension Order. Two of the licensees surrendered their license. The matter is still pending for the third.

## **VII. Future Meeting Dates**

Future 2011 meeting dates are:

- March 24 in Sacramento
- June 16, location to be determined
- September 15, location to be determined

## **VIII. Suggestions for Future Agenda Items**

California Association of Marriage and Family Therapists (CAMFT) suggested discussions related to single conviction of driving under the influence (DUI) with no prior DUI convictions.

CAMFT suggested further discussions regarding the Board's authority to utilize PC 23.

## **IX. Public Comment for Items Not on the Agenda**

No public comments were made.

**Blank Page**



1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Compliance and Enforcement Committee

**Date:** March 9, 2011

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject:** Enforcement Staffing

---

### Current Staffing

The Board's enforcement unit is comprised of twelve staff members under the direction of one manager. The Board currently has two vacancies in its enforcement unit. The consumer complaint intake-citation and fine desk and a field investigator position are vacant. Remaining staff are performing the duties associated with the current vacancies in addition to their own duties.

The current Investigative Analysts (5) who respond to the consumer complaints received by the Board carries an average case load of 75 cases.

Two staff members conduct criminal conviction investigations. One staff member reviews all applicants with prior criminal convictions. These members carry an average of 121 cases.

Probation monitoring is conducted by the same individual that conducts the applicant criminal conviction review. This individual currently has 62 active probationers.

The Field Investigator carries an average case load of 20 cases in addition to 30 consumer complaint cases.

The unit has one member responsible for initiating all criminal conviction cases, updating the Data Bank and processing all proposed decisions.

### Consumer Protection Enforcement Initiative Positions

In 2010 DCA submitted a budget change proposal (BCP) on behalf of all boards and bureaus. This BCP requested additional staff necessary to achieve the Enforcement Performance Measures. As a result of this BCP, the Board received 1.5 Special Investigator Positions. The Board is currently in the process to establish these positions.

### Hiring Freeze Executive Order

Executive Order B-3-11 implemented the existing hiring freeze. Within the order were parameters under which an exemption to the hiring freeze may be granted. Recently, clarification regarding the parameters and the process to request an exemption were provided to the Board. Board staff is in the process of preparing exemption requests in an effort to fill our existing enforcement vacancies.

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Compliance and Enforcement Committee

**Date:** March 9, 2011

**From:** Marina Karzag  
Board of Behavioral Sciences

**Telephone:** (916) 574-7863

**Subject:** Update on Fingerprinting Requirement for Licensees and Registrants

---

## **Background**

As a result of the adopted regulations in 2009, all licensees and registrants who have previously not submitted fingerprints as a condition of licensure or registration for the Board of Behavioral Sciences (BBS), or for whom fingerprints do not exist in the California Department of Justice's (DOJ) criminal offender record identification database for BBS, must do so prior to their next renewal date occurring on or after October 31, 2009. Failure to comply with this requirement can result in disciplinary action or the issuance of a citation, which may include a fine of up to \$5,000.

Using data from the DOJ and the BBS, staff identified 34,665 individuals in the BBS licensing population affected by this requirement. BBS staff continues to notify and process fingerprint results for individuals that are required to comply.

## **Fingerprint Processing Requirements**

Licensees and registrants affected by this requirement must complete and submit the Request for Live Scan Service Form at an approved Live Scan Service Site and pay the necessary fees (\$32 DOJ processing fee, \$19 Federal Bureau of Investigation (FBI) processing fee, and variable site service fees). The Live Scan Service Form includes information on the fingerprinting process and detailed instructions on how to fill out the form. The Live Scan site retains one copy of the form, the second copy must be mailed to BBS, and the third copy is retained by the licensee or registrant as proof of completion.

The Live Scan Service site submits the fingerprint results to DOJ for processing, and DOJ electronically submits the results to BBS. Both the DOJ and FBI must accept the fingerprints. Fingerprints may be rejected by either agency for a variety of reasons, such as technical errors, or the individual's fingerprints may not be prominent enough to be read by the Live Scan machine. If either the DOJ or FBI rejects the fingerprints, then BBS notifies the licensee or registrant of the rejection and provides a copy of the rejection letter, a new Live Scan Service Form with the necessary information filled in, and instructions on how to retake the fingerprints. The letter instructs the licensee or registrant to show all of the enclosed documents, including the letter, to

the Live Scan technician at the Live Scan site. The cost for one fingerprint retake is included in the initial Live Scan fees, and the licensee or registrant does not have to pay another processing fee, but the site may charge an additional service fee.

BBS is only permitted to submit a Name-Check Request form in order to verify the criminal offender record of the licensee or registrant if the licensee's or registrant's fingerprints are rejected twice because the fingerprint quality is too low. If the fingerprints are rejected twice for any reason other than poor quality fingerprints, then the licensee or registrant must complete and submit a new Request for Live Scan Service Form at an approved Live Scan Service site and pay the necessary fees.

The Name-Check may also be rejected for various reasons. If the Name-Check is rejected, then the licensee or registrant must complete and submit a new Request for Live Scan Service Form at an approved Live Scan Service site and pay the necessary fees. The Name-Check must be received by DOJ within 75 calendar days of the second rejection notice, and the FBI must receive the Name-Check from the DOJ within 90 days from the second rejection notice. This only leaves 90 days for BBS and DOJ to process the Name-Check Request form. If the FBI does not receive the Name-Check request within 90 days, then the FBI deletes the licensee's or registrant's file from its database and the licensee or registrant must start the process over.

In order to reduce the possibility of errors throughout the process, BBS provides licensees and registrants with detailed instructions on filling out the Request for Live Scan Service form. If the fingerprints are rejected, BBS instructs the licensee or registrant to bring the pre-filled Live Scan Service Form and all rejection documentation to the Live Scan site. Providing the Live Scan technician with all of the required information is critical to ensuring the accuracy and timeliness of fingerprint processing and may reduce the licensee's or registrant's cost of complying with the fingerprint requirement. Even though BBS takes these measures to mitigate problems, the Live Scan program is overseen by DOJ and involves multiple organizations that are not under the oversight and direction of BBS. Despite these constraints, BBS staff continues to focus on providing quality service to its licensees and registrants throughout the process.

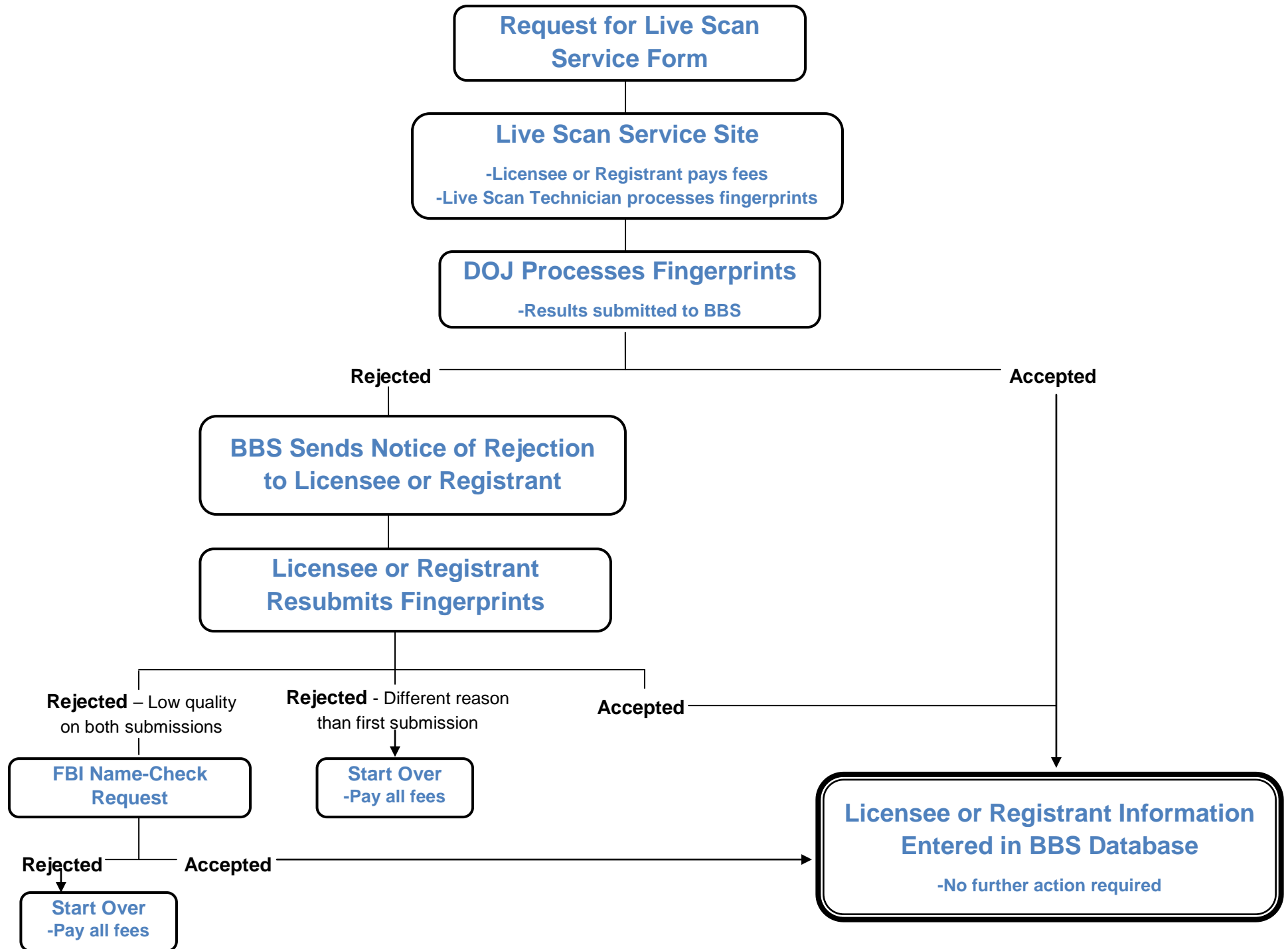
The DOJ Web site provides numerous resources on the Live Scan program, including contact information and a searchable database of certified Live Scan sites. Due to the volume of Live Scan submissions, DOJ is not able to correct processing errors made at Live Scan sites. However, agencies may contact the DOJ's Client Service Program if problems continue at a specific Live Scan site. As encouraged by DOJ, BBS advises licensees and registrants to visit a different Live Scan site if problems persist at a particular site.

Out-of-state licensees are required to complete and submit the Request for Exemption from Mandatory Electronic Fingerprint Submission Requirement form, two fingerprint hard cards, and the \$51 processing fee to BBS. BBS sends a notice to these licensees with the required documents approximately 60 days before the license expiration date. BBS sends out-of-country licensees four fingerprint cards in case the first set are rejected due to the limited number of fingerprint locations outside the United States.

## **Attachment**

California Licensee and Registrant Fingerprint Process Flow Chart

# California Licensee and Registrant Fingerprint Process Flow Chart



**Blank Page**

Board / Bureau / Program Name:		Behavioral Sciences		
Measure Type / Name	Collection Method	7/1/2010 thru 2/28/11	Your Program's Target	Over /Under
<b>PM 1: Volume</b> Number of complaints received	Extracted from CAS and submitted quarterly through the Performance Measure Workbook	1365	No target required	
<b>PM 2: Cycle Time</b> Average number of days to complete complaint intake	Extracted from CAS and submitted quarterly through the Performance Measure Workbook	5 days	5 Days	On Target Even
<b>PM 3: Cycle Time</b> Average number of days to complete closed cases not resulting in formal discipline	Extracted from CAS and submitted quarterly through the Performance Measure Workbook	123	180 Days	On Target 57 Days under
<b>PM 4: Cycle Time</b> Average Number of Days to Complete Cases Resulting in Formal Discipline	Extracted from CAS and submitted quarterly through the Performance Measure Workbook	801	544 Days	Past Target 257 Days over
<b>PM 5: Efficiency (Cost)</b> Average cost of intake and investigation for complaints not resulting in formal discipline	TBD	N/A	Targets will not be required until first quarter baseline has been established	
<b>PM 6: Customer Satisfaction</b> Consumer satisfaction with the service received during the enforcement process.	Results extracted from survey by SOLID staff and reported to programs	% Satisfaction	75% Satisfaction	
<b>PM 7: Cycle Time</b> Average number of days from the date a probation monitor is assigned to the date the monitor makes first contact.	Probation data recorded and submitted quarterly through Performance Measure Workbook		10 Days	
<b>PM 8: Cycle Time</b> Average number of days from the time a violation is reported to the program to the time the probation monitor responds.	Probation data recorded and submitted quarterly through Performance Measure Workbook		7 Days	

## Overview of Enforcement Program Activity March 2010 - February 2011

### Complaint Intake

Complaints	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	YTD
Received	96	79	81	87	91	91	79	97	67	79	76	66	989
Closed without Assignment for Investigation	0	0	0	0	0	0	0	0	0	0	0	0	0
Assigned for Investigation	95	79	81	87	91	91	79	97	67	79	76	66	988
Average Days at Intake - to Close or Assigned for Investigation	10	4	5	7	9	7	6	7	5	4	5	8	7
Pending - Intake	1	0	0	0	0	0	0	0	0	0	0	0	0

Convictions/Arrest Reports	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	YTD
Received	96	87	131	71	107	123	85	72	70	115	95	52	1104
Closed / Assigned for Investigation	96	87	131	72	107	123	85	72	70	115	95	52	1105
Average Days to Close	4	4	2	8	5	3	4	2	2	3	3	5	4
Pending - Intake (Convictions, etc.)	0	0	0	0	0	0	0	0	0	0	0	0	0

### Investigation

Desk Investigation	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	YTD
Initial Assignment for Desk Investigation	191	166	212	159	198	214	164	169	137	194	171	118	2093
Closed	188	151	145	253	101	153	186	125	165	105	197	112	1881
Average Days to Close	110	94	94	87	136	131	96	120	108	154	118	164	113
Pending	596	612	677	583	675	730	707	750	725	813	784	790	790

Field Investigation (BBS Inv.)	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	YTD
Assignment for Non-Sworn Field Investigation - Board Inv. Analyst	10	3	0	7	2	3	6	0	2	1	3	0	37
Closed	5	5	2	5	6	8	10	7	2	5	2	5	62
Average Days to Close	426	422	431	383	430	347	356	387	708	215	469	320	385
Pending	55	53	50	53	50	45	42	35	35	30	31	26	26



Field Investigation (DOI)	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	YTD
Assignment for Sworn Field Investigation - Division of Inv.	0	0	3	0	2	4	3	1	0	5	0	0	18
Closed	3	2	0	3	1	1	2	2	1	3	2	1	21
Average Days to Close	741	565	0	355	1212	896	801	720	650	340	367	294	619
Pending	20	18	21	17	18	21	22	20	19	20	18	17	17

All Investigations	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	YTD
Closed	196	158	147	261	108	162	196	134	168	113	201	118	1962
Average Days to Close	128	110	98	96	163	146	114	143	119	162	124	172	127
Total Pending	671	683	748	653	743	796	771	805	779	863	833	833	833

### Enforcement Actions

	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	YTD
AG Cases Initiated	4	13	5	10	15	4	16	7	9	3	5	11	102
AG Cases Pending	147	150	147	147	149	148	153	153	154	147	143	143	143
SOIs Filed	5	3	0	3	1	0	3	0	0	3	0	1	19
Accusations Filed	6	9	9	8	13	7	7	9	6	2	5	7	88
Proposed/Default Decisions Adopted	0	2	1	2	3	3	5	3	4	4	4	2	33
Stipulations Adopted	2	6	7	5	6	2	4	3	4	4	5	4	52
<b>Disciplinary Orders</b>	<b>Mar-10</b>	<b>Apr-10</b>	<b>May-10</b>	<b>Jun-10</b>	<b>Jul-10</b>	<b>Aug-10</b>	<b>Sep-10</b>	<b>Oct-10</b>	<b>Nov-10</b>	<b>Dec-10</b>	<b>Jan-11</b>	<b>Feb-11</b>	<b>YTD</b>
Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations)	2	8	8	7	9	5	9	6	8	8	9	6	85
Average Days to Complete*	643	762	775	685	930	683	714	686	745	744	981	853	794

Citations	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	YTD
Final Citations	17	6	6	62	6	11	3	6	7	5	2	4	135
Average Days to Complete*	111	144	215	51	439	239	208	258	265	376	316	248	156

\* average days for enforcement actions is from the date the complaint was received to the effective date of the citation or disciplinary order.

**Enforcement Unit Report - December 2009**  
**Pending Conviction and Consumer Complaints As of February 28, 2011**  
**Average Age from Complaint Receipt or Referred to AG**

CONVICTION COMPLAINTS												
	MONTHS				YEARS					Total	Overall Avg In Days *	AG Avg In Days
	0-3 0-90 *	4-6 91-180 *	7-9 181-270 *	10-12 271-364 *	1 365-728	2 729-1092*	3 1093-1456 *	4 1457-1820 *	Over 4 yrs *			
PENDING												
CSR (1)	164	84	70	31	17	0	0	0	0	366	139	-
IA (2)	0	0	0	0	0	0	0	0	0	0	0	-
DOI (3)	0	0	0	0	0	0	0	0	0	0	0	-
EXPERT (4)	0	0	0	0	0	0	0	0	0	0	0	-
AG - PRE (5)	1	2	1	5	16	1	1	0	0	27	453	131
AG - POST (6)	0	1	2	7	30	15	2	0	0	57	606	380
REPORT TOTALS	165	87	73	43	63	16	0	0	0	450		

CONSUMER COMPLAINTS												
	MONTHS				YEARS					Total	Overall Avg In Days	
	0-3 0-90 *	4-6 91-180 *	7-9 181-270 *	10-12 271-364 *	1 365-728	2 729-1092*	3 1093-1456 *	4 1457-1820 *	Over 4 yrs *			
PENDING												
CSR (1)	182	100	85	32	23	3	0	0	0	425	148	-
IA (2)	0	4	8	4	5	0	0	0	0	21	289	-
DOI (3)	1	3	1	2	4	0	0	0	0	11	313	-
EXPERT (4)	0	0	0	2	7	1	0	0	0	10	564	-
AG - PRE (5)	0	1	3	2	8	5	0	0	0	19	555	153
AG - POST (6)	1	0	0	0	12	14	6	3	0	36	852	406
REPORT TOTALS	184	108	97	42	59	23	6	3	1	522		

\* Overall Avg. Age in Days is from the complaint received date to month end date.

(1) Complaint reviewed by analyst

(2) Cases under formal investigation by Investigative Analyst

(3) Cases under formal investigation by the Division of Investigation

(4) Expert review during evaluation of complaint

(5) Cases awaiting filing of accusation by Attorney General's office, Does not include Subsequent Discipline

(6) Cases after filing of an accusation by Attorney General's office, Does not includes Subsequent Discipline

BOARD OF BEHAVIORAL SCIENCES  
CATEGORY OF PENDING COMPLAINTS  
As of February 28, 2011

CATEGORY DESCRIPTION	AP	AS	CE	DL	DP	EP	IM	LC	MF	UL	Total
ABANDONMENT	-	-	-	-	-	-	-	-	3	-	3
ADVERTISING_/ MISREPRESENTATION	3	1	1	1	-	-	18	3	8	-	35
AIDING & ABETTING	-	-	-	-	-	-	-	-	2	-	2
APPL. REFERRAL FOR CRIM. CONVICTION *	138	1	-	-	-	-	-	-	-	-	139
BEYOND SCOPE	-	-	-	-	-	-	-	2	2	-	4
BREACH OF CONFIDENCE	-	-	-	-	-	-	1	1	5	-	7
CONVICTION OF CRIME *	2	27	-	2	1	1	55	28	34	-	150
CUSTODY	-	-	-	-	-	-	-	3	4	-	7
DISCPL. BY ANOTHER STATE OR AGENCY	-	1	-	-	1	-	-	1	-	-	3
DUAL RELATIONSHIP	-	-	-	-	-	-	3	1	4	-	8
EMOTIONAL/PHYS. HARM	-	-	-	-	-	-	-	2	6	-	8
FAILURE TO PROVIDE RECORDS BY H&S	-	-	-	-	-	-	-	-	2	-	2
FAILURE/REPORT ABUSE	-	1	-	1	-	-	-	2	3	-	7
FEE DISPUTES	-	-	-	-	-	-	1	-	4	-	5
FRAUD	-	-	-	-	-	-	4	2	6	-	12
HEALTH & SAFETY	-	-	-	-	-	-	-	-	2	-	2
IMPROPER SUPERVISION	-	-	-	-	-	-	-	7	8	-	15
INFRACTION	1	-	-	-	-	-	-	-	-	-	1
INSURANCE, MEDI-CAL	-	-	-	-	-	-	-	-	2	-	2
LICENSEE LIVESCAN - CRIMINAL CONV. *	-	-	-	2	-	2	-	24	38	-	66
MENTAL ILLNESS	-	-	-	-	-	-	-	1	4	-	5
NEGLIGENCE	-	2	-	1	6	1	5	26	69	-	110
NON-JURISDICTIONAL	-	-	-	-	-	-	3	1	5	20	29
OTHER	-	-	-	-	-	-	1	1	1	1	4
RENEWAL RPT'D. CRIMINAL CONVICTION *	-	1	-	-	-	-	3	3	3	-	10
SELF USE DRUGS/ALCOHOL	-	-	-	-	-	-	1	-	3	-	4
SEXUAL MISCONDUCT	-	-	-	-	2	-	4	2	9	-	17
THIRD PARTY COMPLAINT	-	-	-	-	-	-	1	5	5	-	11
UNLICENSED PRACTICE	1	-	-	-	-	-	3	1	1	29	35
UNPROFESSIONAL CONDUCT	-	5	-	1	1	-	17	30	76	-	130
<b>TOTAL</b>	<b>145</b>	<b>39</b>	<b>1</b>	<b>8</b>	<b>11</b>	<b>4</b>	<b>120</b>	<b>146</b>	<b>309</b>	<b>50</b>	<b>833</b>

\* All Criminal Conviction related

AP - Applicant

AS - ASW

CE - CE Provider

DL - Dual Licensed within BBS

DP - Licensed with BBS & Psychology Bd

EP - LEP

LC - LCSW

MF - MFT

UL - Unlicensed

**BOARD OF BEHAVIORAL SCIENCES  
BREAKDOWN OF ENFORCEMENT ACTIVITY - CASES AT THE AG'S OFFICE  
BY LICENSEE POPULATION  
2010 - 2011 FISCAL YEAR (1)**

	<b>PENDING</b>	<b>Licenses In Effect (2)</b>	<b>% of Licenses to Pending Cases</b>
APPLICANTS	24	n/a	n/a
SUSEQUENT DISP. (3)	8	n/a	n/a
DUAL LICENSEES (4)	0	n/a	n/a
DUAL W/BOP (4)	4	n/a	n/a
CE PROVIDERS	0	2493	0.00
ASW	7	9005	0.08
LCSW	31	18340	0.17
IMF	29	13376	0.22
MFT	47	31056	0.15
LEP	1	1821	0.05
<b>TOTAL</b>	<b>151</b>	<b>76091</b>	<b>0.20</b>

- Note:
- (1) Pending as of February 28, 2011.
  - (2) Licenses in effect as of March 1, 2011. Does not include cancelled, revoked, or voluntary surrender of licenses.
  - (3) Subsequent Discipline for violation of probation.
  - (4) Dual licensees are those that hold dual licenses with BBSE. Dual w/BOP are licensed with BBSE and the Board of Psychology.

**BOARD OF BEHAVIORAL SCIENCES**  
**CATEGORY TYPES OF DISCIPLINARY ACTION TAKEN**  
**2010 - 2011 FISCAL YEAR \***

		IMF MFT	ASW LCSW	LEP	APPLICANT
<b>REVOKED</b>					
Conviction of a Crime		9	4		
Licensee Livescan - Criminal Conviction			1		
Discipline by Another State			1		
Violation of Probation Terms		3		1	
Sexual Misconduct			1		
Mental Illness		1	1		
Unprofessional Conduct		1			
<b>Subtotal</b>	<b>23</b>	<b>14</b>	<b>8</b>	<b>1</b>	<b>0</b>
<b>REVOKED STAYED PROBATION</b>					
Dual Relationship		1			
Unprofessional Conduct		1	1		
Discipline by Another State		1			
Negligence			1		
Conviction of a Crime		8	2		
Renewal Rpt'd. Criminal Convictions		2	1		
Applicant Referral / Criminal Convictions		3	5		
<b>Subtotal</b>	<b>26</b>	<b>16</b>	<b>10</b>	<b>0</b>	<b>0</b>
<b>SURRENDER OF LICENSE</b>					
Dual Relationship		1	1		
Sexual Misconduct		3	1	1	
Criminal Conviction		1	2		
Unprofessional Conduct		3			
Renewal Rpt'd. Criminal Convictions		1			
Violation of Probation		2			
<b>Subtotal</b>	<b>16</b>	<b>11</b>	<b>4</b>	<b>1</b>	<b>0</b>
<b>TOTAL</b>	<b>65</b>	<b>27</b>	<b>14</b>	<b>1</b>	<b>0</b>

\* Time frame: July 1, 2010 through February 28, 2011

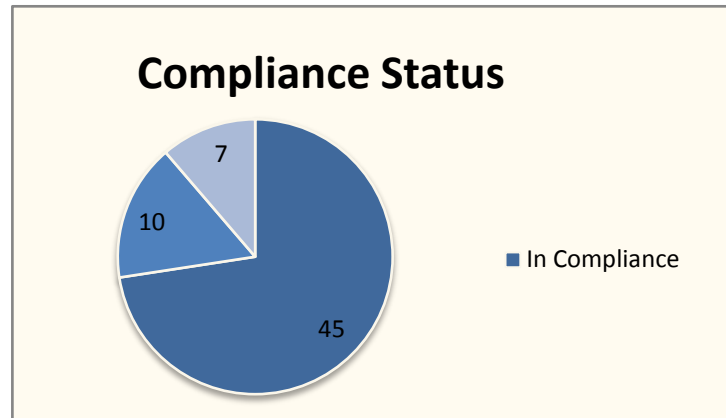
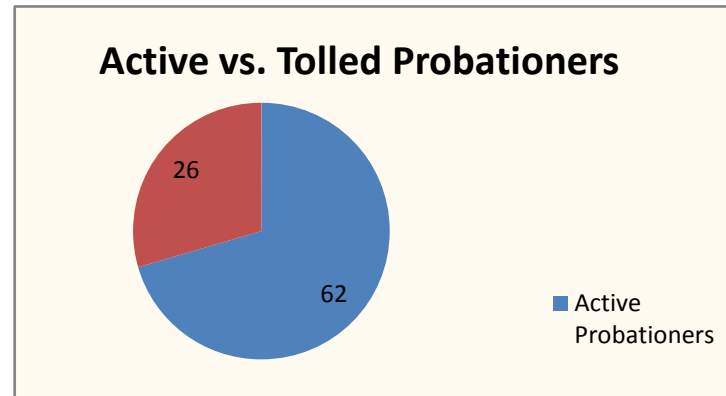
**Blank Page**

## Probation Program Overview March 2011

Active Probationers	62
Tolled Probationers	26
<b>Total</b>	<b>88</b>

	(yr/mos)
Avg. Time Completed	1.41
Avg. Time Remaining	2.71
Total Avg. Time on Probation	4.12

<b>Compliance Status</b>	
In Compliance	45
Out of Compliance - Violation Notice Sent	10
Referred to AG for Viol. of Prob.	7
<b>Total Out of Compliance</b>	<b>17</b>

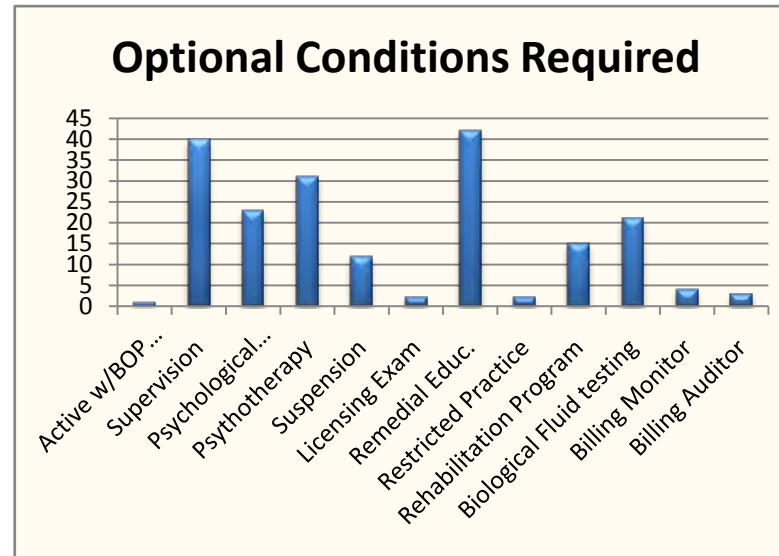


# Probation Program Overview March 2011

## Optional Conditions Required (Active Probationers)

Active w/BOP Requirement  
Supervision  
Psychological Evaluation  
Psychotherapy  
Suspension  
Licensing Exam  
Remedial Educ.  
Restricted Practice  
Rehabilitation Program  
Biological Fluid testing  
Billing Monitor  
Billing Auditor

1  
40  
23  
31  
12  
2  
42  
2  
15  
21  
4  
3

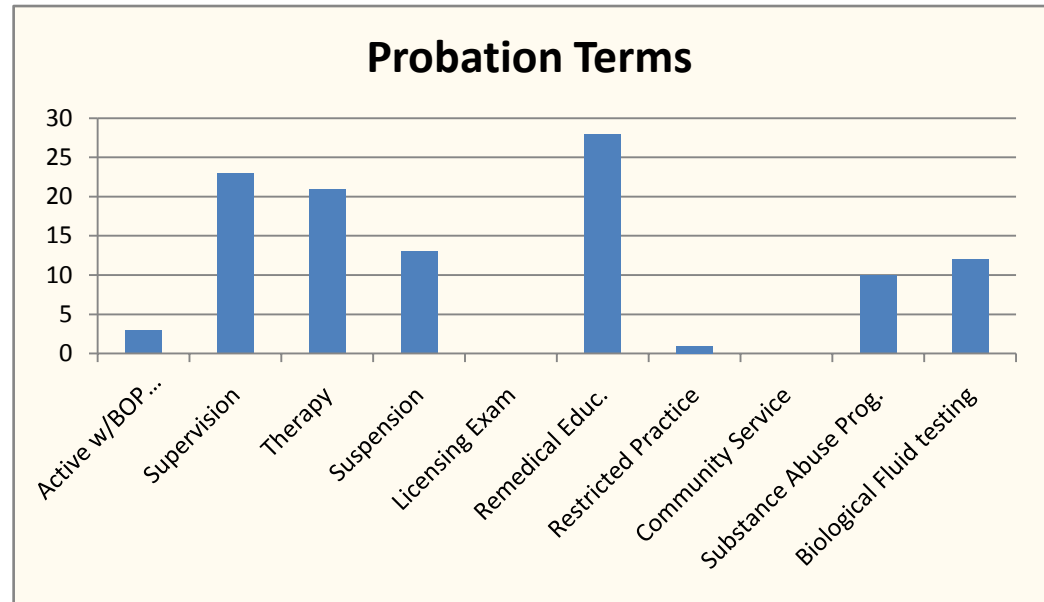




## Probation Program Overview March 2011

### Active Probationers Completing

Active w/BOP Requirement	3
Supervision	23
Therapy	21
Suspension	13
Licensing Exam	0
Remedical Educ.	28
Restricted Practice	1
Community Service	0
Substance Abuse Prog.	10
Biological Fluid testing	12



**Blank Page**

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Compliance and Enforcement Committee

**Date:** March 9, 2011

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7830

**Subject:** Phamatech Inc.

---

Probationers may be required to submit to biological fluid testing as a term/condition of their probation. The Board's previous procedure required the Probation Monitor to determine the frequency of the testing, determine the specifics of the testing, locate a testing site, and notify the probationer of the requirement to test.

In an effort to improve our process and increase the effectiveness of our probation monitoring program, the Board began to participate in the drug testing contract initiated by DCA effective October 2010. Phamatech Inc., is the contracted provider and is responsible for the scheduling, observing, collecting, processing, and analysis of all drug testing.

Through Phamatech, probationers are required to check in daily either through a secure website or via a phone call to determine if they have been selected to test. Testing is done on a random basis. If the probationer is selected to test, the probationer must test that day at a selected site. A current collection site list is maintained by Phamatech and is available on their website.

Within four (4) days of the laboratory receiving the test, the Board receives notification of negative and non-negative results. An automatic email is sent to the Board when a probationer fails to test or in the event of a positive test result. A review of a positive test by a Medical Review Officer is available upon request.

The Probation Monitor may consult with Phamatech at any time to resolve discrepancies, concerns, or to discuss test results. Additionally, Phamatech provides probationers with a number to use if there is a concern or question regarding their testing process.

The probationer is required to maintain a minimum supply of Chain of Custody forms to use if selected to test. The forms are \$29 each. In addition to the cost of the Chain of Custody forms, the probationer is responsible for the collection site service fee. This fee is typically \$25.

**Blank Page**



# PHAMATECH

Phamatech, Inc.  
10151 Barnes Canyon Road  
San Diego, CA 92121, USA

Toll-free (888) 635-5840  
Local (858) 643-5555  
Fax (858) 635-5843

sales@phamatech.com  
www.phamatech.com

## CALIFORNIA DEPT OF CONSUMER AFFAIRS Licensee Instruction Form

### LICENSEE INFORMATION

**December 29, 2010**

Last Name:

First Name:

Street Address:

City/Town:

Zip Code:

Phone Number:

### START DATE

Your Start Date: January 27, 2011

### INSTRUCTIONS TO PURCHASE DRUG TESTS FORMS

Chain of Custody Forms must be purchased prior to drug tests by calling Phamatech's Customer Service at 1-877-635-5840. Chain of Custody Forms can be purchased with credit cards, debit cards, cashiers checks or money orders. The cost for the Drug Testing is \$29.00 per test. Once purchased, the Chain of Custody Forms will be mailed to you at your address provided above within 5 business days. Please notify Phamatech Inc. of any changes in your Name or Address. You may be called on consecutive days to provide a specimen for a drug test therefore you need to have a minimum of 3 to 4 forms in your possession at all times. You must purchase one (1) chain of custody form for each drug test. Please have your account number list below when calling in.

**Account Number:**

### INSTRUCTIONS TO LOGIN FOR DAILY NOTIFICATION

Once a day you are required to log into a secure Internet site or call into a phone system. The Internet site and the phone system are operational between 5:00 AM and 5:00 PM daily. If you have been selected for a drug test you must have your drug test performed that day at an approved collection site. To log into the secure Internet site, using your browser, type in: **dca.phamatech.com/donor** as prompted enter the user name and password.

**Username;;**

**password;;** and follow the directions.

To call in on the phone system; dial the toll Free Number: 1-877-552-6988 as prompted enter the account number and password.

**Account #;**

**Password;;** and follow the directions.

### **INSTRUCTIONS IF YOU ARE SELECTED**

If you are selected to have a drug test today; please bring your pre-paid Chain of Custody Form to any approved collection site. You may schedule an appointment with your collection site prior to arrival. Please provide the collection site with your Phamatech Inc, Chain of Custody Form upon arrival. The collection site will require you to pay for the collection services at their established rate. The collection site should provide you with a copy of your completed Chain of Custody Form prior to your departure; this is your record of compliance that a drug test was performed.

### **APPROVED COLLECTION SITES**

Please log onto [www.phamatech.com](http://www.phamatech.com) and click on the DCA logo for a complete list of approved collection sites with hours and days of operation provided. You may select any collection site on the list. You will be responsible to pay the collection site upon arrival for your drug screen collection.

### **OBSERVED COLLECTIONS**

Please note that all collections performed for the California Department of Consumer Affairs **are observed**. Observed is defined as 1) remove all articles from your pockets or person; 2) remove clothing from your ankles to above your waist; 3) be physically observed by a collector of the same sex as the licensee, which must visually observe the urine stream leaving the body and entering the collection device. Please note that some collection site may provide hospital type gowns to change into to make it more convenient to provide an observed specimen. You must contact the collection site in advance when you have been selected to test to verify that they have a staff member of the same sex available to perform the collection or will need to locate another site.

If you have any questions prior to your collection or during the collection process that is not consistent with above, please call our support line provided below.

### **SUPPORT LINE**

For any assistance with your testing process please call Phamatech Customer Service at 1-877-635-5840.

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Compliance and Enforcement Committee      **Date:** March 9, 2011

**From:** Kim Madsen      **Telephone:** (916) 574-7841  
Executive Officer

**Subject:** National Practitioner Data Bank Healthcare Integrity and Protection Data Bank

---

## Background

The National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB) are collectively referred to as the Data Bank. The Data Bank is a confidential information clearinghouse created by Congress to improve health care quality, protect the public, and reduce health care fraud and abuse in the U.S.

The intent of the Data Bank is to improve the quality of health care by encouraging State licensing boards, hospitals, professional societies, and other health care organizations to identify and discipline those who engage in unprofessional behavior; to report medical malpractice payments; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history.

Together, the NPDB and HIPDB contain reports on health care practitioners, providers, and suppliers, which are submitted by eligible organizations as mandated by Federal law. The Board is an eligible organization in that it is a State licensing board.

The NPDB receives and discloses reports on all licensure actions taken against health care practitioners and organizations and all negative actions or findings concluded against health care organizations. The HIPDB receives and discloses reports related to final adverse actions taken against health care practitioners, providers, and suppliers.

The Data Bank is used to inform health care organizations - such as hospitals, health plans, and health care regulatory entities (e.g., State licensing boards) - that an in-depth review of a practitioner's past actions may be prudent. Organizations use the Data Bank information along with data from other sources when considering a practitioner for clinical privileges, employment, affiliation, or licensure, or when reviewing a practitioner's records.

The confidential information within the Data Bank is only accessible to certain groups. Hospitals, State licensing boards and other health care organizations, professional societies,

certain Federal agencies and others, if they meet the eligibility requirements, may access the information. Practitioners, providers, and suppliers may access their own information.

### Data Bank Requirements

As an eligible organization, the Board is registered with the Data Bank and reports all adverse actions to the Data Bank. All adverse actions must be reported within 30 days of taking the action as well as any revisions to the action. Eligible organizations that are not compliant with the reporting requirements will have their names published by HIPDB in a public report.

### Reportable Adverse Actions

State licensure actions taken as a result of formal proceedings are reportable to the Data Bank. These adverse actions include:

- Revocation or suspension of a license.
- Reprimand, censure, or probation of a license.
- Dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.
- Any other loss of license, whether by operation of law, voluntary surrender (excludes non-payment of renewal fees, retirement, or change to inactive status), or otherwise.
- Any negative action or finding that is publicly available information.

### Board Compliance

The Board is currently in compliance with the reporting requirements. Ensuring our compliance included a review of all adverse actions previously reported to the Data Bank and a comparison of all adverse actions taken by the Board from 2006 through 2009 for accuracy. The Data Bank is updated on an ongoing basis to reflect any revisions to previously reported actions as well as enter new actions. Citation and fines are not considered a reportable action.

As a registered organization the Board may also access the Data Bank to determine if a licensee or applicant has any previous adverse action in another state.

---



## Reporting Compliance Status of Government Agencies

*Compliance as of October 1, 2010*

California	Status as of 7/1/2010	Status as of 10/1/2010
Accountant	Under Review	Working Toward Compliance
Acupuncturist	Working Toward Compliance	Compliant
Administrator of Adult Residential Facility	Under Review	Non-Compliant
Administrator of Group Homes	Under Review	Non-Compliant
Administrator of Residential Care Facilities of the Elderly	Under Review	Non-Compliant
Certified Hemodialysis Technician	Compliant	Compliant
Clinical Laboratory Scientist	Under Review	Non-Compliant
Cytotechnologist	Under Review	Non-Compliant
Hearing Aid Dispenser	Working Toward Compliance	Compliant
Home Health Aide(Homemaker)	Compliant	Compliant
Laboratory Director	Under Review	Non-Compliant
Medical Laboratory Technician	Compliant	Compliant
Midwife	Compliant	Compliant
Naturopath	Compliant	Compliant
Nuclear Medicine Technologist	Working Toward Compliance	Under Review
Nursing Home Administrator	Working Toward Compliance	Compliant
Nursing Related Professions (Other Than Midwife)	Working Toward Compliance	Working Toward Compliance
Occupational Therapist	Working Toward Compliance	Compliant
Occupational Therapy Assistant	Working Toward Compliance	Compliant
Optician	Compliant	Compliant
Optometrist	Working Toward Compliance	Compliant
Pharmacist	Not Reviewed	Compliant
Phlebotomist	Under Review	Non-Compliant
Physician Assistant	Not Reviewed	Compliant
Podiatrist	Under Review	Compliant
Psychologist	Not Reviewed	Compliant
Registered Dispensing Optician	Compliant	Compliant
Research Psychoanalyst	Compliant	Compliant
Social Worker	Under Review	Working Toward Compliance
X-Ray Technician	Working Toward Compliance	Under Review
X-Ray Technologist	Working Toward Compliance	Under Review

<http://www.npdb-hipdb.hrsa.gov/news/reportingCompliance.jsp#ca>

**Blank Page**

## The Data Bank at a Glance

### NPDB

### HIPDB

#### Background

The National Practitioner Data Bank was established under Title IV of Public Law 99-660, the *Health Care Quality Improvement Act of 1986*, and is expanded by Section 1921, as amended by section 5(b) of the *Medicare and Medicaid Patient and Program Protection Act of 1987*, and as amended by the *Omnibus Budget Reconciliation Act of 1990*. NPDB is an information clearinghouse to collect and release all licensure actions taken against all health care practitioners and health care entities, as well as any negative actions or findings taken against health care practitioners or organizations by Peer Review Organizations and Private Accreditation Organizations.

The Healthcare Integrity and Protection Data Bank was established under section 1128E of the *Social Security Act* as added by Section 221(A) of the *Health Insurance Portability and Accountability Act of 1996*. HIPDB was implemented to combat fraud and abuse in health insurance and health care delivery and to promote quality care. HIPDB alerts users that a more comprehensive review of past actions by a practitioner, provider or supplier may be prudent.

#### Who Reports?

- Medical malpractice payers
- State health care practitioner licensing and certification authorities (including medical and dental boards)
- Hospitals
- Other health care entities with formal peer review (HMOs, group practices, managed care organizations)
- Professional societies with formal peer review
- State entity licensing and certification authorities
- Peer review organizations
- Private accreditation organizations
- Federal and State Government agencies
- Health plans

#### What Information is Available?

- Medical malpractice payments (all health care practitioners)
- Any adverse licensure actions (all practitioners or entities)
- Revocation, reprimand, censure, suspension, probation
- Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction
- Any other loss of license
- Adverse clinical privileging actions
- Adverse professional society membership actions
- Any negative action or finding by a State licensing or certification authority
- Peer review organization negative actions or finding against a health care practitioner or entity
- Private accreditation organization negative actions or findings against a health care practitioner or entity
- Licensing and certification actions
- Revocation, suspension, censure, reprimand, probation
- Any other loss of license - or right to apply for or renew - a license of the provider, supplier, or practitioner, whether by voluntary surrender, non-renewal, or otherwise
- Any negative action or finding by a Federal or State licensing and certification agency that is publicly available information
- Civil judgments (health care-related)
- Criminal convictions (health care-related)
- Exclusions from Federal or State health care programs
- Other adjudicated actions or decisions (formal or official actions, availability of due process mechanism and based on acts or omissions that affect or could affect the payment, provision, or delivery of a health care item or service)

## **NPDB**

## **HIPDB**

### **Who Can Query?**

- Hospitals
  - Other health care entities, with formal peer review
  - Professional societies with formal peer review
  - State health care practitioner licensing and certification authorities (including medical and dental boards)
  - State entity licensing and certification authorities\*
  - Agencies or contractors administering Federal health care programs\*
  - State agencies administering State health care programs\*
  - State Medicaid Fraud Units\*
  - U.S. Comptroller General\*
  - U.S. Attorney General and other law enforcement\*
  - Health care practitioners (self query)
  - Plaintiff's attorney/pro se plaintiffs (under limited circumstances)\*\*
  - Quality Improvement Organizations\*
  - Researchers (statistical data only)
- Federal and State Government agencies
  - Health plans
  - Health care practitioners/providers/suppliers (self-query)
  - Researchers (statistical data only)

\* eligible to receive only those reports authorized by Section 1921.

\*\* eligible to receive only those reports authorized by HCQIA.

### **Who Cannot Query?**

The Data Bank is prohibited by law from disclosing information on a specific practitioner, provider, or supplier to a member of the general public. However, persons or organizations can request information in a form that does not identify any particular organization or practitioner.

### Who Can Query and Report to the NPDB?

Organization	Query	Report
Boards of medical and dental examiners	Optional	Required
State licensing boards for other practitioners	Optional	Required
Hospitals	Required*	Required
Health care entities (also referred to as health care organizations) that provide health care services and follow a formal peer review process for the purpose of furthering quality health care	Optional	Required
Professional societies that follow a formal peer review process for the purpose of furthering quality health care	Optional	Required
Medical malpractice payers	Prohibited	Required
Peer Review Organizations	Prohibited	Required
Quality Improvement Organizations	Optional**	No Requirement
Private Accreditation Organizations	Prohibited	Required
State Medicaid Fraud Control Units and Law Enforcement Agencies	Optional**	No Requirement
Agencies administering Federal Health Care Programs and their contractors	Optional**	No Requirement
State Agencies administering State health care programs	Optional**	No Requirement
State Agencies that license health care entities	Optional**	Required
U.S. Comptroller General	Optional**	No Requirement

\* Hospitals must query when physicians, dentists, and other health care practitioners apply for medical staff appointment (courtesy or otherwise) or for clinical privileges, and every two years on physicians, dentists, and other health care practitioners who are part of the medical staff or who hold privileges.

\*\* This organization may only receive information reported to the NPDB under Section 1921 of the Social Security Act.

### Who Can Query and Report to the HIPDB?

Organization	Query	Report
Federal and State Government agencies	Optional	Required
Health plans	Optional	Required

**Blank Page**



# NPDB-HIPDB Data Bank News



National Practitioner Data Bank—Healthcare Integrity and Protection Data Bank

JANUARY 2011

## Identity-Proofing: What to Expect

The October 2010 newsletter provided details about the new electronic authentication (e-authentication) security initiative coming to the Data Bank. E-authentication is a process of establishing confidence in user identities electronically presented to an information system. The new authentication measures are based on National Institute of Standards (NIST) and Office of Management and Budget (OMB) guidelines, and are designed to enhance the overall security of the Data Bank by protecting the system from unauthorized use. Certifying Officials, Entity Data Bank Administrators, and users will be required to provide verification of identity (identity-proofing) and verification of organization affiliation in order to access the Data Bank. The new measures will be phased in over 2 years during the registration renewal process starting January 24, 2011. Health care organizations registering for the first time will begin using the identity-proofing procedures immediately, whereas renewing organizations will receive 60 days notice prior to their identity-proofing registration renewal date.

The new identity-proofing procedures will result in changes to the way organizations renew their registrations with the Data Bank. Entity Data Bank Administrators will fill an important role in verifying the identities of the users

### Inside this issue:

Identity-Proofing: What to Expect...	1
What Do You Think About Our New Look?.....	1
NPDB Observes 20 Years of Service to Health Care.....	3
Helping Organizations Understand New Section 1921 Reporting.....	3
Continuous Query (PDS) Use Is On the Rise.....	5
HR Departments May Query NPDB.....	5
'Twas the (Conference) Season.....	6
DPDB Spotlight Shines on Compliance Activities.....	7
Helpful Hints from the Data Bank.....	8
On the Horizon.....	8

*Identity-Proofing: What to Expect...continued on page 2*

## What Do You Think About Our New Look?

By now, we at the Data Bank hope you have had time to browse our newly redesigned Web site! Our Web site address, <http://www.npdb-hipdb.hrsa.gov>, did not change, but we do have a crisp new look that we hope you like and find easier to navigate.

If you are a **Health Care Organization** or a **Practitioner** you can get to the information you need quickly and easily right from the home page. Prominent **News**, **Resources** and **Community and Education** links will let you know about the latest happenings, take you directly to the National Practitioner Data Bank (NPDB) or Healthcare Integrity and Protection Data Bank (HIPDB) Guidebook and newsletters, and inform you about upcoming Data Bank outreach activities. Secondary pages feature a sidebar with submenus that include *About* and *How To* sections full of helpful information for Data Bank users.

Take some time to explore the site; you may be surprised and learn something new about the Data Bank. We would love to hear what you think about the new look at [help@npdb-hipdb.hrsa.gov](mailto:help@npdb-hipdb.hrsa.gov). ❖



*The redesigned Web site offers a new look and is easier to navigate.*

Identity Proofing: What to Expect.. continued from page 1

at their organizations and will also coordinate the verification process for their organizations. To prepare for these enhanced responsibilities, the Data Bank will provide Entity Data Bank Administrators with a short online training course that will qualify them to perform their duties as Local Registration Authorities (LRAs). The training, which will be available through the Data Bank Web site, will be required for organizations that are retaining user accounts, and will orient Entity Data Bank Administrators to the new procedures for creating user accounts and identity-proofing existing users.

While the Data Bank e-authentication effort is not complicated, it is a change from past processes. It will require Certifying Officials, Entity Data Bank Administrators, and users to become familiar with a new registration renewal process. Below are a few highlights of the changes they will notice.

**Entity Data Bank Administrators and Certifying Officials**–The Certifying Official (and Entity Data Bank Administrator, if a separate person) will need to print and complete a Registration document that must be notarized. In addition, they must include a copy of their work badge or a letter from their organization's Human Resources Department to show proof of employment. These registration and identity-proofing documents must be mailed to the Data Bank at the address printed on the Registration document. Upon renewal, Entity Data Bank Administrators will select a new user ID and will have permission to perform non-administrative duties such as querying and reporting without a separate user account.

**Data Bank Users**–After the Entity Data Bank Administrator submits a user's renewal or requests a new user account, each Data Bank user will receive an electronic notification to go into the system and print his or her Registration document. Users will sign the Registration document in front of their Entity Data Bank Administrator, or a Notary Public if they are not located with their Entity Administrator. The Entity Data Bank Administrator must mail the document to the Data Bank in order to complete the user's registration. New users will also receive a notification after their Entity Data Bank Administrator has reviewed their documents and authorized them to use the system.

USER ACCOUNT INFORMATION		National Practitioner Data Bank Healthcare Integrity and Protection Data Bank
Provide Entity Information	Establish Administrator Account	Print Registration
Final Steps		
<p>Next, create an administrator account for your organization. The administrator is the individual that manages your users' accounts, your organization's registration, your payment methods, and your agent relationships. If an entity has only one person who uses the IQRS, the entity may choose to use the administrator account as its regular user account.</p> <p>After your registration has been approved, you may create additional accounts with administrator privileges if desired.</p>		
<p>Is the administrator the same person as the certifying official? <input checked="" type="radio"/> Yes <input type="radio"/> No</p>		
<p><b>Administrator Account Information</b></p> <p>Choose a user ID and password for your account. User IDs must contain at least eight alphanumeric characters and are case sensitive. Passwords must contain at least eight alphanumeric characters including at least one number. Passwords are case sensitive.</p>		
User ID :	mcwilliamsp	
New Password :	*****	Password Rules
Confirm Password :	*****	

*Entity Data Bank Administrators will indicate if they are also the Certifying Official, and they will self-select a User ID.*

The Data Bank is dedicated to making the identity-proofing transition as smooth as possible for our users and is developing a variety of orientation materials to guide them through the new process. Notification will be provided when the materials become available on the Web site.❖

<p><b>The above entity's next registration renewal date is: MAY 25, 2012</b></p>		
<p><b>The above entity's current privileges are:</b></p> <p>Query and Report to the Healthcare Integrity and Protection Data Bank, and Query and Report to the National Practitioner Data Bank.</p>		
<p><b>New Data Bank Correspondence</b></p>		
Date	Sender	Message
02/16/2011	NPDB-HIPDB	You have a user pending approval. After witnessing the user's signature you may <u>approve the account</u> .

*A Data Bank Correspondence alerts Entity Data Bank Administrators that a user has completed online registration and is pending approval.*



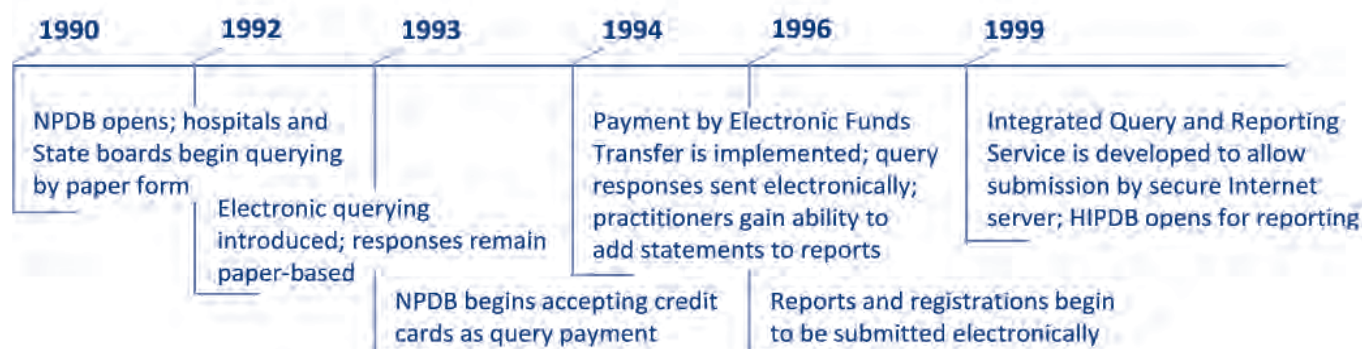
## NPDB Observes 20 Years

On September 1, 2010 the National Practitioner Data Bank (NPDB) celebrated 20 years of protecting public health and welfare by promoting effective peer review among medical practitioners. It was almost 25 years ago that President Ronald Reagan signed into law *Title IV of Public Law 99-660*, known as the *Health Care Quality Improvement Act of 1986*, which led to NPDB's establishment in 1990.

When the NPDB began processing queries and collecting its first practitioner reports in September 1990, all transactions were paper-based and the average query response time was 6 weeks. Today the NPDB provides query responses in minutes and handles over 100,000 queries per year. The NPDB has advanced significantly in terms of system changes, the volume of transactions it handles, and the diversity of technical capabilities it offers.

A pioneer among Federal information applications, the Data Bank captured attention early with its achievements:

- In 1993, the National Committee for Quality Assurance (NCQA) adopted an accreditation standard encouraging health maintenance organizations to query the NPDB. In the same year, HRSA's Bureau of Health Professions' (BHP) Division of Quality Assurance (now known as the Division of Practitioner Data Banks [DPDB], which manages the Data Bank) received a Federal Leadership award for NPDB's efforts to reduce paper processing through electronic data transmission.



## Helping Organizations Understand

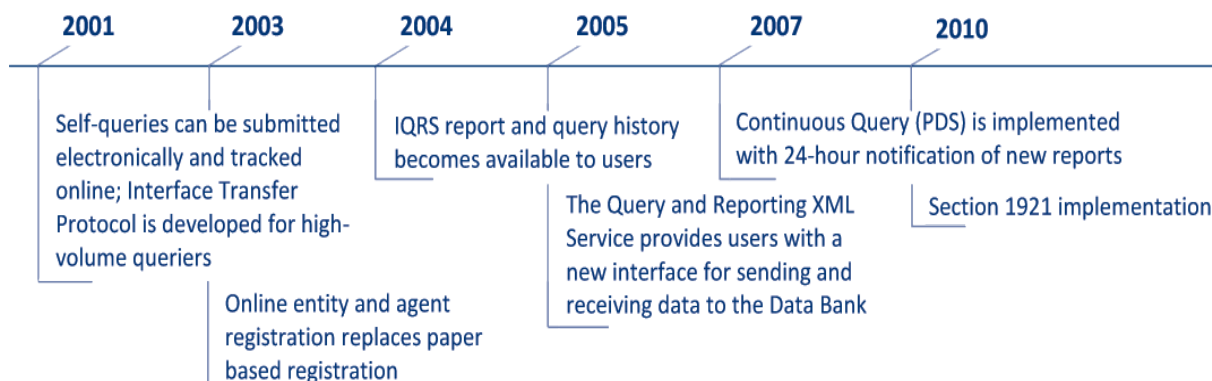
The Data Bank conducted a conference call on August 25, 2010 to help accreditation organizations understand the reporting requirements of Section 1921 of the *Social Security Act*. With the implementation of Section 1921, accreditation organizations are required to report to the Data Bank for the first time. Sixteen organizations participated in the call to discuss the requirements and why reporting is so important. Accreditation organizations must report final determinations of denial or termination of an accreditation status that indicate a risk to patient safety or quality of health care services. Understanding definitions in the law is critical to effectively exercising reporting responsibilities. Division of Practitioner Data Banks (DPDB) staff discussed the meanings of key statutory and regulatory definitions and provided examples of reportable and non-reportable events. A hospital would lose accreditation, for example, if it failed to have life-saving medicine available at all times because it would pose a risk to patient health and safety. Not every negative action is reportable. A negative action taken against a health care organization for reasons unrelated to patient safety or quality of health care services, such as a failure to pay survey fees, would be a non-reportable event.

DPDB staff discussed how to register as an accreditation organization and how to submit a report through the Data Bank Web site. To address attendees' specific issues, a question and answer session followed the presentation. The participants

## of Service to Health Care

- In 1997, the NPDB's success spurred the U.S. Department of Health and Human Services' Office of Inspector General to request that the BHP design, develop and operate the Healthcare Integrity and Protection Data Bank (HIPDB) – a Data Bank established to help combat health care fraud and abuse. It was opened in 2000 and this past year also marked the tenth anniversary of the HIPDB.
- In 2002, DPDB received an Electronic Government Trailblazer Award for the NPDB-HIPDB. This award highlights federal, state, local, and international government programs that have successfully implemented the most innovative information systems in e-Government.
- In 2004 the NPDB-HIPDB program was honored as an "Excellence.gov Top Five Award" finalist. Excellence.gov recognizes best practices in Federal Electronic Government (e-Gov) applications. The award is given to Federal organizations for outstanding information technology achievements in the public service arena.

The timeline below provides an overview of the changes undertaken by the NPDB in its 20-year history, but the full magnitude of its achievements cannot be captured in a graphic. The Data Bank has evolved from a mainframe system that required weeks to process a query, to a Web-based application that responds to queries in minutes. Over the years, the Data Bank has remained responsive to a host of Federal statutes and changes in health care while at the same time it has fulfilled the needs of its increasing ranks of users by introducing ever faster, more efficient processes. This is truly an achievement to celebrate. ❖



## New Section 1921 Reporting

agreed that the conference call format was helpful and informative. The reporting scenario examples, the Q&A session, and the guidance assisted accreditation organizations in understanding the reporting requirements. If you would like to learn more, or to view the online presentation for accreditation organizations, go to <http://www.npdb-hipdb.hrsa.gov/news/temp/AccreditationOrganizationReportingGuidance.pdf>.

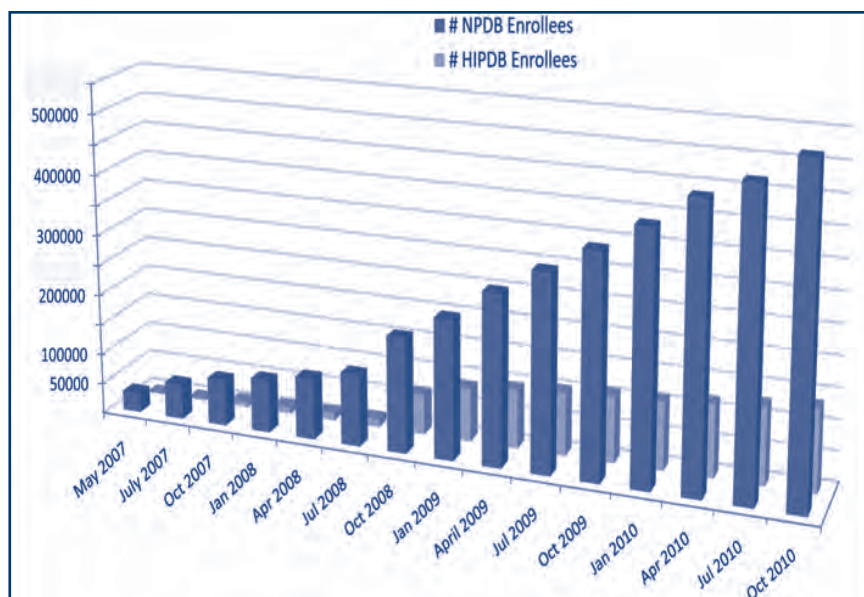
In other outreach efforts, Data Bank staff spoke to Emergency Medical Services (EMS) officials at the National Association of State Emergency Medical Officials (NASEMO) 2010 Annual Meeting. The Data Bank staff addressed EMS reporting requirements under Section 1921 and the Healthcare Integrity and Protection Data Bank (HIPDB). In addition, the Data Bank staff answered questions relating to emergency health professionals' reporting responsibilities and ability to query the Data Bank as part of licensure and certification decisions.

Can the Data Bank help you understand your reporting and querying requirements? To arrange a conference call or to have the Data Bank staff speak at your upcoming event, please complete the *Speaker Engagement Request* found at <http://www.npdb-hipdb.hrsa.gov/forms/SpeakerEngagementRequest.pdf>. ❖

## Continuous Query (PDS) Use Is On the Rise

The first “pioneers” of Continuous Query (formerly known as Proactive Disclosure Service [PDS]) started using the Continuous Query feature in May 2007. During the initial prototype phase, 142 hospitals and their agents signed up to be among the first users of this new service. The service had more than 32,000 enrolled practitioners in its first month and came through its first 18 months of use with flying colors. In 2008, Continuous Query was made available to all users. Its use has increased steadily ever since, reaching more than 1,600 health care organizations as of October 2010, with a combined NPDB and HIPDB enrollment of more than 600,000 practitioners.

Entity Data Bank Administrators can activate Continuous Query for their organizations with just a few clicks from the *Administrator Options* screen. Why not start using Continuous Query now and find out how easy querying can be? ♦



*More than half a million practitioners are enrolled in Continuous Query (PDS).*

## HR Departments May Query NPDB

With the expansion of the National Practitioner Data Bank (NPDB) last March to include information under Section 1921 of the *Social Security Act*, hospitals and other health care organizations are finding that the NPDB offers a new opportunity for their Human Resources (HR) departments. State licensure actions taken against all health care practitioners (not just physicians and dentists) are available in the NPDB, making it an excellent source for pre-employment checks on many types of health care staff. Your facility can query the NPDB to learn about adverse actions taken against nurses, therapists, technicians, social workers, and other types of allied health professionals. Let the NPDB improve your hiring process and enhance patient safety at the same time.

An HR department in a hospital or other health care organization has the option of registering in its own right and obtaining its own Data Bank Identification Number (DBID), even though the organization already has a DBID for its medical staff credentialing team. While it is possible to simply set up new user accounts for HR staff under the existing DBID, an HR Department can establish its own account with its own DBID, enabling it to keep the credentialing and HR functions separate. It should be kept in mind that HR departments have different functions and different reasons for querying than the credentialing staff. In cases where HR and credentialing teams share a Data Bank account, all eligible queriers at the organization will have access to all query results, which may not be desirable. In addition, if all of an organization's users are established under a single DBID, it will not be possible to differentiate between query charges for HR purposes and query charges related to credentialing. For these reasons, HR departments may prefer to set up their own Data Bank accounts to be used strictly for HR purposes.

If you have questions or need more information about how to proceed, please call the Data Bank Customer Service Center: 1-800-767-6732 (1-800-SOS-NPDB). ♦

## 'Twas the (Conference) Season

**F**all is one of the most popular times of year for conventions and other professional gatherings, and medical and health care conferences are no exception. For the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank (NPDB-HIPDB) the season included participating in 10 conferences between August and November. Among the events attended by NPDB-HIPDB were the Corporate Counsel Workshop of the Physicians Insurers Association of America (PIAA) and the National Association of Medical Staff Services (NAMSS) annual convention, as well as hosting 2 major events of its own – the Data Bank Education Forum and the annual NPDB Executive Committee Meeting.

Many of the events in which the Data Bank participates are those to which it is invited by organizations interested in increasing their understanding of the Data Bank. In turn, the Data Bank uses these opportunities to increase its understanding of how to optimize its response to stakeholders. The Data Bank is represented at these events by staff members who are experts in the policy and legislation that are its foundation. Often Data Bank staff are invited to speak on an appointed topic, but they also serve as exhibitors. Many conferences will find Data Bank staff managing a booth on the exhibit floor, as well as distributing educational materials and answering attendees' questions.

One of the best-attended Data Bank events, held at least once a year, is the Data Bank Education Forum. This forum actively engages users in discussion groups and feedback sessions. The Education Forum attracts individuals who use the system to query and report, and who interact regularly with the Data Bank. Typically, these forums are held in different geographic locations throughout the United States so that users from all across the country can attend in a location convenient for them. The forums target topics that are of interest to the users and serve as a learning experience for all participants. The attendees typically contribute many valuable ideas for improving the system. The 2010 Education Forum was held in Chicago in September with 60 people attending.

Altogether over the past year, Data Bank representatives spoke or exhibited at more than 30 different conferences or professional conventions in 21 States. "It's always exciting to hear the comments and ideas of the daily users of the Data Bank," commented Cynthia Grubbs, Director of the Division of Practitioner Data Banks. "We appreciate their collegial support and interest."

If you missed the Data Bank at last year's Education Forum, we hope you will plan to join us for one in 2011. You can find the current list of outreach activities on our schedule below, or on our Web site on the Data Bank Outreach page ([http://www.npdb-hipdb.hrsa.gov/community\\_n\\_education/outreachEvents.jsp](http://www.npdb-hipdb.hrsa.gov/community_n_education/outreachEvents.jsp)). If you would like to request a Data Bank speaker at your event, please see the instructions and form on our Web site at <http://www.npdb-hipdb.hrsa.gov/forms/SpeakerEngagementRequest.pdf>. ❖

### UPCOMING OUTREACH ACTIVITIES

CONFERENCE	LOCATION	DATE	ROLE
Indiana Association of Medical Staff Services (IAMSS) Quarterly Educational Conference	Sullivan, IN	January 28, 2011	Speaker
AHLA Hospital and Health Systems Law Institute	Las Vegas, NV	February 10-11, 2011	Speaker
America's Health Insurance Plans (AHIP) Annual Policy Conference	Washington, DC	March 8-9, 2011	Exhibitor

# DPDB Spotlight Shines on Compliance Activities

**W**e're paying attention... We're here to help... We're focusing on completeness and accuracy... These are just a few of the messages frequently communicated since March 2010 by the Division of Practitioner Data Banks' (DPDB) staff to hundreds of officials managing State boards that regulate health professions. Staff worked directly with almost 950 boards in every State to improve the completeness, accuracy, and timeliness of the information in the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

The Division's compliance plan is evolving. Initial activities focused primarily on State boards that appeared to have never reported on health professions that were licensed or certified by those boards. Subsequent activities focused on certain health profession boards that had reported to the Data Bank. The DPDB compared reports in the HIPDB with data obtained from State boards that license or certify nursing-related professions, physician assistants, podiatrists, pharmacists, social workers, and psychologists. The next phases of compliance activities will focus on physicians and dentists.

The results of these compliance activities were posted on the Data Bank Web site on July 1 and again on October 1, 2010. Future postings will occur periodically. To view the **Reporting Compliance Status of Government Agencies** and to obtain details regarding the process and definitions used in the report, please visit <http://www.npdb-hipdb.hrsa.gov/news/temp/reportingCompliance.jsp>.

A summary of the compliance status for July and October 2010 are detailed in *Table 1*. In July, 830 health profession boards were reviewed. Of those, 33% were compliant; 10% were non-compliant; 20% were working toward compliance; and 37% were under review.

In October, 896 health profession boards (including those reviewed in July) were reviewed. Of those, 67% were compliant; 12% were non-compliant; 16% were working toward compliance; and 5% were under review. In addition, 53 health profession boards listed as "under review" on the July 2010 posting were removed from the October 2010 posting after further analysis showed that those professions were not licensed or certified by their respective States.

These compliance activities have had a significant impact on Data Bank activities. From July 1 through September 30, 2010, 36,519 licensure reports were submitted to the Data Bank. During the sametime period in 2009, there were 10,266 reports submitted. Future compliance status updates will be posted on the Division's Web site. All of these activities are part of HRSA's continuing mission to protect the health and safety of the public.❖

Summary of Compliance Activities in 2010					
	Compliant	Non-Compliant	Working Towards Compliance	Under Review	Removed from List
July 2010	278 (33%)	81 (10%)	165 (20%)	306 (37%)	
October 2010	599 (67%)	105 (12%)	146 (16%)	46 (5%)	53

*Table 1 details the compliance status for July and October 2010.*



## Helpful Hints

**M**ultiple Entity Data Bank Administrators After Registration Renewal—After January 2011 when your organization renews its registration using identity-proofing you will have the option of establishing more than one Entity Data Bank Administrator. Also, Administrators will be able to assign specific roles to each user. For example, Entity Data Bank Administrators can specify that users have only querying privileges, or only reporting privileges, or they can assign some users a dual role. Also, the Administrator account will have the ability to perform user functions (i.e., report and query) in addition to Administrator functions.

**Does Your Organization Use an Agent?** If you use an agent to query and report on your behalf, your organization will be able to see the agent's activity (in addition to your own) in the monthly summary email you receive. Previously, you could not see your agent's reporting and querying transactions on your monthly summary. Many organizations requested this new enhancement, and we are happy to let you know that it will be available beginning January 24, 2011.❖

## On the Horizon

**P**lease help us make reporting easier and less time-consuming. The Data Bank recently launched a usability study to improve the Integrated Querying and Reporting Service (IQRS) based on input from our users. With the recent redesign of the Data Bank Web site (see the article, *What Do You Think About Our New Look?* on page 1), the next step is to improve and update the IQRS. The initial phase of the usability study will work with and observe IQRS users. The participants will provide feedback on what features they like and dislike in the system. Changes based on the usability study will make the IQRS easier to navigate for the novice to expert-level user. Stay tuned for our findings as the study progresses and the new IQRS takes shape.❖

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES

---

Health Resources and Services Administration  
Bureau of Health Professions  
Division of Practitioner Data Banks  
Parklawn Building, Room 8-103  
5600 Fishers Lane  
Rockville, MD 20857

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Compliance and Enforcement Committee

**Date:** March 9, 2011

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject: Substance Abuse Coordination Committee Update**

---

## Background

Senate Bill 1441, signed by the Governor on September 28, 2008, established the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (DCA). The SACC is subject to the Bagley-Keene Open Meeting Act.

The SACC is comprised of the Executive Officers of the healing arts boards within DCA and a designee of the State Department of Alcohol and Drug Programs. The bill required the SACC to develop, by January 1, 2010, uniform and specific standards to address the issue of a substance abusing licensee and ensure public protection. Once approved, all healing art boards are required to follow these standards.

On April 16, 2010, the SACC met to discuss proposed language changes to four standards as well as any non-substantive edits to all standards. During the meeting additional edits were made to the proposed language changes to provide clarification. These edits were approved by the SACC and the Uniform Standards were approved.

During the April 16, 2010 meeting concerns were raised as to the frequency of drug testing required under Uniform Standard #4. The standard currently requires a licensee to be tested at least 104 times during the first year. After the first year if a licensee is practicing, the licensee will be randomly tested at least 50 times a year. In response to these concerns, a subcommittee was appointed to further discuss this requirement. At the May 2010 Board meeting it was reported that this subcommittee's next meeting would be June 21, 2010.

## Subcommittee Update

The subcommittee actually met on August 4, 2010. The subcommittee reviewed information from various sources which included articles discussing addictive diseases and data from other states. The subcommittee discussion focused on the frequency of testing, the number of tests now required is not supported by literature on the subject, differences between

substance abusing licensees who are practicing and those who are not, and the approach to create a standard to fit all participants.

The subcommittee also considered a tiered approach based on the individual's circumstances. Following testimony from the stakeholders in attendance, the subcommittee agreed to meet in September.

#### Current Status

The subcommittee is scheduled to meet on March 9, 2011 to discuss proposed amendments and recommendations to Uniform Standard #4. The outcome of this meeting will be reported during the March 24, 2011 subcommittee meeting.

#### Attachments

Current Uniform Standards

SACC Recommendations

Proposed Amendments to Uniform Standard #4

---



# **Uniform Standards Regarding Substance-Abusing Healing Arts Licensees**

Senate Bill 1441 (Ridley-Thomas)

Implementation by  
Department of Consumer Affairs,  
Substance Abuse Coordination Committee



Brian J. Stiger, Director  
April 2010



**Substance Abuse Coordination Committee**

Brian Stiger, Chair  
**Director, Department of Consumer Affairs**

Elinore F. McCance-Katz, M.D., Ph. D.  
**CA Department of Alcohol & Drug Programs**

Janelle Wedge  
**Acupuncture Board**

Kim Madsen  
**Board of Behavioral Sciences**

Robert Puleo  
**Board of Chiropractic Examiners**

Lori Hubble  
**Dental Hygiene Committee of CA**

Richard De Cuir  
**Dental Board of California**

Joanne Allen  
**Hearing Aid Dispensers**

Linda Whitney  
**Medical Board**

Heather Martin  
**Board of Occupational Therapy**

Mona Maggio  
**Board of Optometry**

Donald Krpan, D.O.  
**Osteopathic Medical Board/Naturopathic Medicine**

Virginia Herold  
**Board of Pharmacy,**

Steve Hartzell  
**Physical Therapy Board**

Elberta Portman  
**Physician Assistant Committee**

Jim Rathlesberger  
**Board of Podiatric Medicine**

Robert Kahane  
**Board of Psychology**

Louise Bailey  
**Board of Registered Nursing**

Stephanie Nunez  
**Respiratory Care Board**

Annemarie Del Mugnaio  
**Speech-Language Pathology & Audiology Board**

Susan Geranen  
**Veterinary Medical Board**

Teresa Bello-Jones  
**Board of Vocational Nursing & Psychiatric Technicians**

**Staff Working Group**

Susan Lancara, DCA, Legislative & Policy Review  
LaVonne Powell, DCA Legal Counsel  
Laura Edison Freedman, DCA Legal Counsel  
Katherine Demos, DCA, Legislative & Policy Review  
Kristine Brothers, Acupuncture Board  
Kim Madsen, Board of Behavioral Sciences  
April Alameda, Board of Chiropractic Examiners  
Richard DeCuir, Dental Board of California  
Kimberly Kirchmeyer, Medical Board of CA  
Jeff Hanson, Board of Occupational Therapy

Margie McGavin, Board of Optometry  
Felisa Scott, Osteopathic Medical Board  
Anne Sodergren, Board of Pharmacy  
Glenn Mitchell, Physician Assistant Committee  
Debi Mitchell, Physical Therapy Board of CA  
Carol Stanford, Board of Registered Nursing  
Liane Freels, Respiratory Care Board  
Amy Edelen, Veterinary Medical Board  
Marilyn Kimble, Board of Vocational Nursing & Psychiatric Technicians

## Table of Contents

Uniform Standard #1 .....	4
Uniform Standard #2 .....	6
Uniform Standard #3 .....	7
Uniform Standard #4 .....	8
Uniform Standard #5 .....	9
Uniform Standard #6 .....	10
Uniform Standard #7 .....	11
Uniform Standard #8 .....	13
Uniform Standard #9 .....	14
Uniform Standard #10 .....	15
Uniform Standard #11 .....	17
Uniform Standard #12 .....	18
Uniform Standard #13 .....	19
Uniform Standard #14 .....	23
Uniform Standard #15 .....	24
Uniform Standard #16 .....	25

**#1 SENATE BILL 1441 REQUIREMENT**

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

**#1 Uniform Standard**

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
  - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
  - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
  - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
  - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
  - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
  - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

**#2 SENATE BILL 1441 REQUIREMENT**

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

**#2 Uniform Standard**

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

**#3 SENATE BILL 1441 REQUIREMENT**

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

**#3 Uniform Standard**

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

**#4 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

**#4 Uniform Standard**

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.
2. Drug testing may be required on any day, including weekends and holidays.
3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.
11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.



**#5 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

**#5 Uniform Standard**

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

**Group Meeting Facilitator Qualifications and Requirements:**

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

**#6 SENATE BILL 1441 REQUIREMENT**

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

**#6 Uniform Standard**

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

**#7 SENATE BILL 1441 REQUIREMENT**

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

**#7 Uniform Standard**

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional if no monitor with like practice is available.
3. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
  - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
  - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
  - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
  - the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;
  - any change in behavior and/or personal habits;
  - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

**#8 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee tests positive for a banned substance.

**#8 Uniform Standard**

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

**#9 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

**#9 Uniform Standard**

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

**#10 SENATE BILL 1441 REQUIREMENT**

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

**#10 Uniform Standard**

**Major Violations** include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

**Consequences** for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
  - a) the licensee must undergo a new clinical diagnostic evaluation, and
  - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

**Minor Violations** include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

**Consequences** for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.



**#11 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

**#11 Uniform Standard**

**“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.**

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

## **#12 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

### **#12 Uniform Standard**

**“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.**

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) year.

**#13 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

**#13 Uniform Standard**

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

**Specimen Collectors:**

- a) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- b) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- c) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- d) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- e) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- f) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- g) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- h) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- i) Must undergo training as specified in Uniform Standard #4 (6).

Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- a) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- b) must be licensed or certified by the state or other nationally certified organization;
- c) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;
- d) shall report any unexcused absence within 24 hours to the board, and,
- e) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

Work Site Monitors:

1. The worksite monitor must meet the following qualifications:
  - a) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
  - b) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional, if no monitor with like practice is available.
  - c) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

- d) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
  - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
  - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
  - c) Review the licensee's work attendance.
3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
  - the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;
  - any change in behavior and/or personal habits;
  - any indicators that can lead to suspected substance abuse.

**Treatment Providers**

1. Treatment facility staff and services must have:
  - a) Licensure and/or accreditation by appropriate regulatory agencies;
  - b) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
  - c) Professional staff who are competent and experienced members of the clinical staff;

- d) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
  - e) Means to provide treatment/progress documentation to the provider.
2. The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:
- a) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
  - b) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
  - c) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

**#14 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

**#14 Uniform Standard**

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

**#15 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

**#15 Uniform Standard**

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.



**#16 SENATE BILL 1441 Requirement**

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

**#16 Uniform Standard**

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.

- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

## RECOMMENDATIONS

1. **Recommendation:** Establish minimum testing frequency “ranges” and clear standards to secure the “random” component of a testing program and provide boards flexibility in assessing the level of risk. Establishing minimum standard “ranges” will diminish a licensee’s ability to anticipate when testing will occur. Clearly, the frequency of testing should be increased for any person the board suspects is currently using or has had a lapse in sobriety for a minimum of a year<sup>4</sup>, and where that board does not pursue immediate suspension or expeditious revocation of the license. In such cases, testing may actually exceed the minimum range. In any case, the proposed standards should include specific instruction to maintain an effective “random” testing program.
2. **Recommendation:** Provide an exception that allows boards flexibility in determining the duration of high frequency testing, equivalent to the proposed testing frequency schedule, in cases where there is evidence that the person has been randomly tested and has maintained sobriety for a length of time. No greater purpose is served by requiring a licensee to undergo the same level of testing when he/she has already participated in a bona fide program. In fact, failure to recognize equivalent testing standards may be punitive and may have negative repercussions.
3. **Recommendation:** Provide an exception from the standard testing frequency schedule, for those isolated incidents that occur outside and unrelated to the workplace and span a great period of time. This will provide some equity in applying standards for low risk candidates and prevent potential repercussions mentioned previously.
4. **Recommendation:** Provide an exception and extension for persons tolling or who are unemployed. These licensees pose no threat to California consumers. Failure to recognize this may appear punitive and result in adverse outcomes.
5. **Recommendation:** Collect useful and reliable data for a three-year period following implementation, to review the outcomes and effectiveness of this standard and determine if amendments are appropriate. There was no evidence, scientific or otherwise, to support the original standards. These proposed standards are based on some research, yet the real outcomes are unknown. Given the numerous unknown outcomes and the potential adverse effects, it is key to responsible government, to measure and review real data and experiences to determine the effectiveness of this standard.

**Blank Page**

## PROPOSED AMMENDMENTS TO UNIFORM STANDARD #4

### #4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

### #4 Uniform Standard

The following drug testing standards shall apply to each licensee subject to drug testing govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

~~Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.~~

### TESTING FREQUENCY SCHEDULE

<u>A board may order a licensee to drug test at anytime. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:</u>	<b>Segments of Probation/Diversion</b>	<b>Minimum Range of Number of Random Tests</b>
<b>Level</b>		
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

### EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY In cases where a board has evidence that a licensee has participated in a random testing program meeting equivalent qualifications as those required in this standard, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I of the testing frequency schedule.

I. NOT EMPLOYED IN HEALTH CARE FIELD A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, a licensee shall notify his/her board, prior to returning to employment in the health care field as required by his/her board. At such time the person returns to employment, if he/she has not previously met the standard, he/she shall

be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

II. TOLLING A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary period is also tolled. A licensee shall notify the board upon his/her return to California and shall be subject to testing as provided in this standard. If he/she returns to employment in a health care field, and has not previously met the standard, he/she shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

## **OTHER DRUG STANDARDS**

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again.

Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

[Additional language here that will allow for other types of biological testing (e.g. blood, hair, etc...) and the use of new technology to monitor for abstention (e.g. electronic bracelet, etc...).

## **OUTCOMES AND AMENDMENTS**

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

### **Historical Data - Two Years Prior to Implementation of Standard**

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, or 3) failed to pay testing costs.

### **Post Implementation Data- Three Years**

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

### **Data Collection**

The data to be collected, shall include, but may not be limited to:

Probationer/Diversionee Name Probation/Diversion Effective Date General Range of Testing Frequency by/for Each Probationer/Diversionee Dates Testing Requested Dates Tested Identify Who Performed Each Test Dates Tested Positive Dates of Questionable Tests (e.g. dilute, high levels) Identify Substances Detected or Questionably Detected Dates Failed to Appear Dates Failed to Call In for Testing Dates Failed to Pay for Testing Date(s) Removed/Suspended from Practice (identify which) Final Outcome and Effective Date (if applicable)

**Blank Page**



1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Compliance and Enforcement Committee

**Date:** March 9, 2011

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject:** Enforcement Academy Presentation

---

Shelly Menzel from the DCA SOLID Training Office will present an overview of the Enforcement Academy training.

---

**Blank Page**

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Compliance and Enforcement Committee

**Date:** March 9, 2011

**From:** Julie McAuliffe, Probation Monitor  
Board of Behavioral Sciences

**Subject:** Psychological Evaluations

---

When a Disciplinary Order requires a psychological evaluation, the Board's Probation Monitor is responsible for securing a psychologist, notifying the probationer of the selected evaluator, reviewing the completed report, and notifying the probationer of the results. An expert list is maintained and the Board utilizes psychologists whose license is current and in good standing, has not had any disciplinary actions or numerous complaints, and whose areas of practice address the probationer's violation(s).

Once a psychologist is selected, the Probation Monitor sends a letter outlining the areas to be covered in the report, a copy of the Decision and Accusation or Statement of Issues and, if the violation was criminal, copies of the criminal documents including the police report(s) and court documents. The probationer is then notified of the selected evaluator and is provided with contact information. The Board requests the report be submitted directly to the Board within 30 days of the last evaluation session. The fee for the psychological evaluation is the responsibility of the probationer and generally costs between \$1,000 and \$2,500.

Once the report is received, the Probation Monitor performs a comprehensive review of the report and notifies the probationer of the evaluation findings and any recommendations for additional conditions. If recommendations are made regarding existing conditions, the Probation Monitor informs the probationer of these additional enhancements to existing conditions and provides them with direction on what is required to maintain compliance. At this time the Board will provide a copy of the report to the probationer if requested.

If a probationer is determined to be unable to practice independently and safely, the Probation Monitor requests additional information from the evaluator regarding treatment required, the frequency, and the timeframe in which they feel is appropriate before another evaluation should be completed. The Probationer Monitor then provides notification to the probationer and specifies the reasons noted by the evaluator. The probationer must immediately cease practice and cannot resume practice until notified by the Board. If an evaluation determines that a probationer should never practice again, the case is then forwarded to the Attorney General to revoke the probation for failure of the evaluation.

The number of active probationers who currently require a psychological evaluation is 23. Ten have successfully passed, four are currently undergoing the evaluation, one is suspended until successful completion of an evaluation, one is in the process of tolling their probation, and three have gone back to the Attorney General either for revocation of probation or voluntary surrender. The Probation Monitor is in the process of securing evaluators for the remaining four probationers.

**Blank Page**

As a condition of your probation, you are required to undergo a psychological/psychiatric evaluation by a Board selected evaluator. This evaluation must begin no later than the deadline specified in the Decision in your case.

## **I. BOARD'S RESPONSIBILITIES**

1. Select and confirm availability of appropriate evaluator.
2. Notify Probationer with the name, address and phone number of evaluator no later than ten (10) days after the effective date.
3. Forward investigative file and other pertinent documents to the evaluator prior to the evaluation.
4. Receive the evaluator's report, send Probationer a copy, and advise Probationer.

## **II. PROBATIONER'S RESPONSIBILITIES**

1. **Set up an appointment with the evaluator.** The initial appointment must be within the time frame specified by the Decision. If the evaluator's schedule does not permit this, it is the Probationer's responsibility to contact the Board in writing to request an extension to a specific date.
2. **Notify the Board by telephone of the appointment date.** The Probation Monitor may be reached at (916) 574-7849.
3. **Forward the following to the evaluator:**

- (a) Copy of INSTRUCTIONS PSYCHOLOGICAL EVALUATION.
- (b) Signed original AUTHORIZATION FOR RELEASE OF CONFIDENTIAL INFORMATION.

It is the Probationer's responsibility to forward this information in sufficient time for it to reach the evaluator **NO LATER THAN FIVE (5) DAYS BEFORE THE FIRST SESSION.**

4. **Keep the appointment** and cooperate with the evaluator/evaluation process. More than one interview and evaluator may be required.
5. **Pay the entire cost of the evaluation.** Probationer should discuss the method of payment with the evaluator, and must follow through on any payment terms.
6. **Document compliance** with the evaluation process in the next Quarterly Report after evaluation appointment(s).
7. **Psychotherapy as directed.**
  - (a) If required by the terms of Probationer's Decision, Probationer will have received instructions with the Decision.
  - (b) If required only as a result of the evaluation, Probationer will receive supplemental instructions after review of the evaluation report.

**Blank Page**

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Compliance and Enforcement Committee

**Date:** March 9, 2011

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject:** Future Meeting Dates

---

The Compliance and Enforcement Committee will meet on the following dates in 2011:

- June 16<sup>th</sup> – Location TBD
  - September 15<sup>th</sup> - Sacramento
-

**Blank Page**